IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 3024 of 2007()

CC.168/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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PETITIONER: ACCUSED

MANOJ BHASKAR,
S/O. BHASKARAN,T.C.75/1353,
CHAYAKUDI LANE,
PETTAH P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.WILSON URMESE

RESPONDENTS: COMPLAINANT AND STATE

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1. G.AJITH KUMAR,
AJITH BHAVAN, T.C.1/2205,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

2. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY P.P. SRI.JIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3024 of 2007

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Dated this the 28th day of September, 2007

O R D E R

The petitioner faces indictment in a prosecution for an offence punishable under Section 138 of the N.I. Act. The complaint was filed as early as in 2003. The petitioner had wanted the cheque in question to be sent to the expert. The cheque was sent to the expert consequent to the order passed by this Court. Report has been secured. At that stage the complainant wanted one more witness to be examined. That witness was cited earlier by the complainant at the time of his examination as the person acquainted with the transaction. The learned Magistrate invoked his powers under Section 311 Cr.P.C. and permitted the complainant to examine that witness by the impugned order, copy of which is produced as Annex.C. The petitioner claims to be aggrieved by Annex.C.

2. What is the grievance? The learned counsel for the petitioner submits that the learned Magistrate is virtually permitting the complainant to fill up a lacuna. Hence the permission granted is not proper and legal. The impugned order may be set aside, it is prayed.

3. I must alertly remind myself of the nature, quality and contours of jurisdiction of this Court under Section 482 Cr.P.C. The powers sought to be invoked and exercised is an extra ordinary inherent jurisdiction. Compelling reasons must be shown to exist to justify the invocation of such jurisdiction. Such jurisdiction can be invoked only in aid of justice. Any and every error, assuming that error has been committed by a subordinate court, will not persuade this Court to invoke such extra ordinary inherent jurisdiction. Has justice fail? Is there miscarriage of justice? Is there abuse of process of court? These are the questions to be considered. While invoking the powers under Section 482 Cr.P.C. I shall not advert to the question in detail. Suffice it to say that I am not persuaded to invoke the powers of this Court under Section 482 Cr.P.C. to interfere with the impugned order, which is purely an interlocutory order. Challenge against such interlocutory orders is post scribed by the stipulations in Section 397 (2) Cr.P.C. The law frowns upon attempt to challenge interlocutory orders in the course of the trial and powers under Section 482 Cr.P.C. cannot lightly be invoked to achieve what is specifically prohibited under Section 397(2) Cr.P.C.

4. This Crl.M.C. is accordingly dismissed. Needless to say the petitioner shall be entitled to raise all his contentions before the learned Magistrate. In the light of such further evidence to be adduced by the petitioner, the learned Magistrate must consider the request of the petitioner on merits and pass appropriate orders. Needless also to say that the dismissal of this Crl.M.C. shall not in any way fetter the rights of the petitioner to challenge the impugned order along with the final order to be passed in the prosecution by the learned Magistrate should need arise for such challenge.

(R. BASANT)
Judge

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